IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 49 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALA P THAKKER

Versus

PRAVINCHANDRA R THAKKER

Appearance:

MS MEGHA JANI for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

MR MEHUL S SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/11/2002

ORAL JUDGEMENT

1. This is a revision application under section 115 of the Code of Civil Procedure (1908) (as amended in 1976).

2. The present applicant is the respondent in Hindu Marriage Petition No.49/94 filed in the Court of District Judge, Bhuj by the opponent, for divorce on the ground of adultery. In the said petition the present applicant filed an application Exh.16 for an order that she should be granted separate use and enjoyment of the matrimonial house. After hearing the parties and considering the objections filed by the opponent-husband, the trial court rejected the said application. It is this order which is the subject matter of the present revision.

2.1 It also requires to be noted that by an interim order dated 13th November 1998 passed in he present revision application, this court had directed the trial court to dispose of the divorce proceedings pending before it within a period of four months from the date of receipt of the writ of the order of the High Court. However, learned counsel for the present applicant is unable to state whether the main matter pending in the trial court has been accordingly disposed of or not.

3. It is both relevant and pertinent to note that the Code of Civil procedure (1908), has been amended by the Code of Civil Procedure (Amendment) Act, 1999, which was published in the Gazette of India dated 30th December 1999. However, by virtue of the Notification issued under section 1, subsection (2) of the said Amendment Act, the amendment came into force from 1st July 2002.

4. For the present purposes, it requires to be noted that section 12 of the Amendment Act amends and modifies section 115 of the principal Act, whereby (inter alia) a new proviso has been substituted as under:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

It therefore becomes obvious that the High Court while exercising its powers of revision under section 115 of the Code (as amended), would be justified in entertaining such a revision application, and/or interfering with the impugned order, only where the impugned order, if it had been made in favour of the applicant in revision, would have finally disposed of the suit or other proceedings. In other words, a revision under section 115, after the amendment, would be entertainable only if the applicant

in revision can successfully contend that if the trial court had granted the application made by the applicant, it would have disposed of the suit or other proceedings (as the case may be).

5. It is also relevant to note that the aforesaid Amending Act of 1999, vide section 32 thereof, deals with repeal and savings.

5.1 By virtue of section 32, subsection (2), clause (i), the amendment introduced by section 12 of the Amending Act shall not affect any proceeding for revision which had been finally disposed of. Obviously, therefore, the only proceeding which the amendment does not and cannot affect is a revision which has been finally disposed of. In other words, any revision application which is pending admission, or pending final hearing after admission, would be governed by the amendment introduced by section 12 of the Amending Act.

6. On the facts and circumstances of the case, it cannot be said that the application made by the present applicant in revision, had it been granted by the trial court, would have disposed of the suit. Under the circumstances, it must be found that this court cannot "vary or reverse any order made, or any order deciding an issue....".

7. It necessarily follows that the present revision is therefore not maintainable and/or incompetent.

8. The aforesaid view has also been expressed by this Court in the case of Parakramsinh Vikramsinh Jadeja Vs. Yogi Corporation, reported at 2002(3) GLR page 2040.

9. This application is, therefore, dismissed. Rule is discharged with no order as to costs.

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